(1)

88-28

No.

Supreme Court, U.S.
FILED
JUL 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1988

IN RE SEIZURE WARRANT
CYRIL ONWUASOANYA,

Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTION PRESENTED

Where petitioner's bank account was seized in contemplation of a civil forfeiture proceeding, did the ruling below conflict with *United States v. $8,850*, 461 U.S. 555, 569 (1983), by denying petitioner jurisdiction to pursue a motion for the return of illegally seized property under Federal Rule of Criminal Procedure 41(e), because no criminal case was pending, when *$8,850* sanctioned a Rule 41(e) motion in these very circumstances?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No.

IN RE SEIZURE WARRANT

CYRIL ONWUASOANYA,
Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OPINIONS BELOW

The Court of Appeals opinion affirming the judgment of the District Court appears in App. A, p. 1a. The official citation is 830 F.2d 372 (D.C. Cir. 1987). The district court's summary order denying petitioner's motion for the return of property appears in App. B, p. 5a.

JURISDICTIONAL STATEMENT

The judgment of the court of appeals was entered on October 9, 1987, App. C, p. 6a. A petition for rehearing was denied on May 19, 1988, App. D, p. 8a. The time within which

to file a petition for a writ of certiorari extends to and includes July 18, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

RULES INVOLVED

Rule 41(e), Federal Rules of Criminal Procedure, provides:

> *Motions for Return of Property.* A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

Rule 54(b)(5), Federal Rules of Criminal Procedure, provides in pertinent part:

> *Other Proceedings.* These rules are not applicable to . . . civil forfeiture of property for violation of a statute of the United States; . . . .

STATEMENT OF THE CASE

On March 19, 1987, a United States Magistrate in the District of Columbia issued a seizure warrant for all of petitioner's assets held by the Perpetual Bank:

> "on the premises known as Perpetual American Bank, FSB 2034 Eisenhower Avenue, Alexandria, Virginia in the Eastern District of Virginia. . . ." App. E, p. 9a.

The warrant was based on an affidavit of M.P.D. Detective Dwight Rawls alleging that the money in the bank account — $11,787.69 — was the product of narcotic trafficking and thus, subject to civil forfeiture pursuant to 21 U.S.C. 881(a)(6); (b).[1] Detective Rawls executed the warrant the same day at the Virginia address listed in the warrant. For convenience, the money was not turned over to him at that time, but was mailed to Rawls at his D.C. office in the form of a cashier's check on March 26.

On April 9, petitioner filed a motion for the return of his property pursuant to Rule 41(e), Federal Rules of Criminal Procedure, alleging *inter alia*, that the United States Magistrate in Washington, D.C., was without jurisdiction to issue a seizure warrant for property located in Virginia. The motion was denied by summary order dated April 13, and an appeal was promptly noted.

It has remained undisputed throughout these proceedings that the seizure warant was not connected to any pending criminal case against petitioner, who had not been arrested or otherwise charged with a crime.

The court of appeals dismissed petitioner's appeal, holding that since the Rule 41(e) motion was not connected to a criminal prosecution, Rule 54(b)(5), Fed. R. Crim. P., barred that

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[1]Petitioner had previously been tried and acquitted of narcotic distribution in federal district court in Washington, D.C. on April 22, 1986. (Crim. No. 86-0032-02). In that case, Detective Rawls was the undercover officer and principal witness against petitioner.

motion because the property had been seized solely for use in a civil forfeiture proceeding.

> "Fed. R. Crim. P. 54(b)(5) clearly establishes that 'these rules [*i.e.*, the Federal Rules of Criminal Procedure] are not available to . . . civil forfeiture of property for violation of a statute of the United States.' " App. A, p. 3a.

REASONS FOR GRANTING THE WRIT

In 1983, Justice O'Connor, speaking for eight members of the Court in the context of a civil forfeiture proceeding, admonished future litigants to promptly file "a motion under Federal Rule of Criminal Procedure 41(e) for a return of . . . seized property," if the initial seizure was believed to be improper. *United States v. $8,850,* 461 U.S. 555, 569 (1983). Amply armed with that good faith belief,[2] petitioner filed such a motion only to be rebuffed by the court of appeals for proceeding in the precise manner sanctioned by this Court. *United States v. $8,850,* was distinguished on the ground that it had not "directly addressed the situation here where the seizure is admittedly pursuant to a civil forfeiture action." n. 1. In fact, the claimant in *$8,850* was not arrested at the time her money was seized when she entered the United States from Canada without declaring the currency in writing. And, eight days later, the claimant was notified by mail that the funds were subject to civil forfeiture, which she could contest. Since the seizure — not incident to an arrest — was, without question, a taking intended to support a civil forfeiture, see 31 U.S.C. 5317(c), n. 1 of the court of appeals opinion, hardly shoulders its burden of distinguishing *$8,850.* Further-

[2]See Fed. R. Crim. P. 41(a) (Magistrates can only issue seizure warrants "within the district, wherein the property . . . is located"; *Weinberg v. United States,* 126 F.2d 1004 (2d Cir. 1942).

more, it is abundantly clear that this Court was targeting seizures meant to anchor civil forfeitures, since it would be quite unnecessary for the Court to have suggested the filing of Rule 41(e) motions which are routinely filed when seizures are incident to arrest and prosecution. Certiorari should thus be granted to resolve the conflict between this Court and the court of appeals. At the very least, it is only appropriate that the Court clarify this matter for the guidance of counsel. See, *e.g.*, *Application of Kingsley*, 802 F.2d 571 (1st Cir. 1986) (Coffin, J., concurring at 580):

> "Due to the quasi-criminal nature of administrative forfeiture proceedings, however, claimants must be permitted to seek the return of property seized in violation of the Constitution by filing a motion pursuant to Fed. R. Crim. P. 41(e). See *United States v. [$8,850 . . . .]*."[3]

Furthermore, as we see it, Rule 54(b)(5) has absolutely no bearing on the instant case. At the juncture petitioner sought relief, there was nowhere extant the "civil forfeiture of property for violation of a statute of the United States." *Id. Per contra*, we were attempting to rapidly trigger just such a proceeding in order to resolve the unlawful seizure question — the very goal targeted by the Court in *$8,850*. Realistically, if the Government upon review of a Rule 41(e) motion concludes that a seizure is indeed, unlawful, the property will be returned without a forfeiture proceeding ever being filed. This, we submit, underscores the fact that petitioner's case does not implicate a still inchoate civil forfeiture action, but only a motion for the return of his unlawfully seized property.

Moreover, even if the Court should conclude, as did the court of appeals, that this case does involve the civil forfeiture

---

[3]Because the Court's suggestion in *$8,850* was intended to initiate a course of action in the district courts, it went beyond mere dictum.

of property, certiorari should be granted because the application of Rule 54(b)(5) to bar a Rule 41(e) motion collides with a recent amendment to the civil forfeiture statute. The court below never addressed the October 27, 1986, amendment to 21 U.S.C. 881(b). That subsection now provides:

> "The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure."

Any perceived ambiguity in the meaning of this inartful language should be resolved in favor of petitioner; especially when it is considered in conjunction with 18 U.S.C. 981(b)(2). That companion civil forfeiture statute, effective on the same date (October 27, 1986) as the amendment to 21 U.S.C. 881(b), is aimed at drug money laundering schemes and is governed by the same procedural requirements of 19 U.S.C. 1602 *et seq.* that apply to 881(b). In addition, it contains a similar seizure warrant provision:

> "The Attorney General or the Secretary of the Treasury, as the case may be, [can obtain] a warrant for such seizure (*i.e.* of property subject to forfeiture) *pursuant to* the Federal Rules of Criminal Procedure. . . ." 18 U.S.C. 981(b)(2), (Emphasis supplied).

The difference in the authorizing language between the two subsections is obviously grounded in the fact that 881(b) was added to, while 981(b)(2) was part of a newly crafted statute seeking to strip drug dealers of their profits. It is certain, however, that these parallel forfeiture statutes are not subject to divergent interpretations insofar as the warrants they authorize are concerned.[4] Since both subsections empower

[4]Properly viewed, 881(b) authorizes a seizure warant "under the Federal Rules of Criminal Procedure."

Government agents to obtain Rule 41 seizure warrants, it would logically follow that they concommitantly embrace the remedy provided by that Rule for a failure to follow its specific mandates. The result, therefore, of incorporating Rule 41 warrants by reference into each of these forfeiture statutes, is to override the restraints Rule 54(b)(5) is thought to impose on the availability of 41(e) motions seeking the return of illegally seized property.

At bottom, no matter how this case is viewed, *Boyd v. United States*, 116 U.S. 616 (1886), weighs heavily against limiting petitioner's access to Rule 41(e). To our knowledge, *Boyd*, has not yet lost its constitutional vitality:

> "We are . . . clearly of the opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal. . . .
>
> As, therefore, suits for penalties and forfeitures, incurred by the commission of offenses against the law, are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment. . . .
>
> [A]lthough the owner of goods sought to be forfeited by a proceeding *in rem* is not the nominal party, he is nevertheless the substantial party to the suit; . . . and in a case like the present he is entitled to all the privileges which appertain to a person who is prosecuted for a forfeiture of his property by reason of committing a criminal offense."

As the Government's efforts to forfeit property for alleged narcotic law violations has dramatically escalated in recent years, this admonition in *Boyd* appears no less timely today than it did over 100 years ago.

CONCLUSION

The petition for a writ of certiorari should be granted to resolve a conflict with this Court and thus permit Rule 41(e), Federal Rules of Criminal Procedure, to operate as it was fully intended to.

Respectfully submitted,

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Counsel for Petitioner
Cyril Onwuasonaya

APPENDIX A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 87-3022

IN RE SEIZURE WARRANT

CYRIL ONWUASOANYA, APPELLANT

Appeal from the United States District Court
for the District of Columbia
(Magistrate No. 87-0223M-01)

On Motion for Summary Reversal

Filed October 9, 1987

Allan M. Palmer was on appellant's motion for summary reversal.

Joseph E. DiGenova, United States Attorney, and *Michael W. Farrell* and *Claire M. Fay*, Assistant United States Attorneys were on appellee's opposition to motion for summary reversal.

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Before: STARR, and SILBERMAN, *Circuit Judges*; and MCGOWAN, *Senior Circuit Judge.*

Opinion for the Court filed Per Curiam.

PER CURIAM: Appellant seeks review of a district court decision denying his request for return of property seized under 21 U.S.C. § 881(a)(6) (1982). Because appellant cannot obtain relief under the Federal Rules of Criminal Procedure in a civil forfeiture case, we dismiss the appeal.

In the district court, the government sought a seizure warrant from a magistrate pursuant to 21 U.S.C. § 881 (a)(6). The government requested a warrant in order to seize the contents of appellant's bank account which, allegedly, were used for illegal drug trafficking. Under section 881(a)(6), the United States is authorized to subject "all moneys . . . furnished or intended to be furnished by any person in exchange for a controlled substance in violation of [the Drug Abuse Prevention Act]" to seizure under the procedures described in 21 U.S.C. § 881(b) and forfeiture in a civil proceeding.

The magistrate issued the warrant. Subsequently, an officer assigned to a special Drug Enforcement Administration task force took the warrant to a Virginia office of appellant's bank. The officer returned to the District of Columbia and a check for the funds in appellant's bank account was mailed from Virginia into the District of Columbia.

Thereafter, appellant brought an action in the district court seeking return of his funds. Although there was no criminal action pending against appellant and despite the civil nature of the seizure, appellant's counsel filed a pleading captioned "Motion For Return Of Property Pursuant To Rule 41(e), [Fed.] R. [Crim.] P." Rule 41(e) states in part:

> A person aggrieved by an unlawful search and seizure may move the district court for the district in

> which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized.

Appellant argued below that the warrant was defective because the funds were located and the warrant was executed outside the territorial jurisdiction of the United States District Court for the District of Columbia.

The district court denied the motion. Appellant promptly filed this appeal and has moved for summary reversal. Before this court, appellant restates the claims which he presented below, namely, that the warrant was invalid because it was executed and the property was located outside of the district court's jurisdiction.

The government has opposed the motion for summary reversal. In its opposition, the government argues that the warrant was indeed valid and also argues that, in any event, Rule 41(e) of the Federal Rules of Criminal Procedure does not authorize the return of property subject to forfeiture under 21 U.S.C. § 881.

While we express no views on appellant's attacks on the warrant's validity, we agree with the government that appellant's property cannot be returned pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure.[1] Fed. R. Crim. P. 54(b)(5) clearly establishes that "these rules [*i.e.*, the Federal Rules of Criminal Procedure] are not available to . . . civil forfeiture of property for violation of a statute of the United States."

---

[1] *But see Guerra v. United States*, 645 F. Supp. 775, 778 (C.D. Cal. 1986) ("[T]he Supreme Court has several times suggested in dicta that where, as here, there is no criminal prosecution *in esse*, a suit pursuant to Rule 41(e) for the return of property is proper.") (citing *United States v. $8,850.00*, 461 U.S. 555, 569 (1983) and *DiBella v. United States*, 369 U.S. 121, 131-32 (1962)). Neither Supreme Court case, however, directly addressed the situation here where the seizure is admittedly pursuant to a civil forfeiture action.

This case is not one where a defendant's property was seized for use in a criminal prosecution, the defendant filed a Rule 41(e) motion in the criminal proceeding and then, following disposition of the criminal charges, the defendant renewed his Rule 41(e) action. *See United States v. Wright*, 610 F.2d 930 (D.C. Cir. 1979); *United States v. Wilson*, 540 F.2d 1100 (D.C. Cir. 1976). Here, as appellant acknowledges, "[t]he instant warrant is not associated with any pending criminal case; appellant not having been arrested nor charged with any offense in the District of Columbia or elsewhere." Motion for Summary Reversal at 3. The statutory authority relied on by the government in seeking the warrant and by the magistrate in issuing the warrant was the civil forfeiture provision of 21 U.S.C. § 881. *See United States v. $39,000 in Canadian Currency*, 801 F.2d 1210 (10th Cir. 1986) (discussing the differences between civil forfeiture under section 881 and criminal forfeiture).

Because proceedings under section 881 are civil in nature and there is no criminal proceeding with which the seizure is connected, appellant cannot avail himself of the relief provided by Fed. R. Crim. P. 41(e). *See* Fed. R. Crim. P. 54(b)(5); *United States v. Rapp*, 539 F.2d 1156, 1160-61 (8th Cir. 1976); *United States v. Greenberg*, 334 F. Supp. 364 (W.D. Pa. 1971). Therefore, we dismiss the appeal.

It is so ordered.

APPPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE SEIZURE WARRANT DIRECTED
TO PERPETUAL SAVINGS BANK FOR THE ASSETS OF CYRIL ONWUASOANYA

Mag. Dkt. 87-0223M-01
(Magistrate Burnett)

ORDER

It appearing that the return on attachment has been filed and that the attachment was made on a bank located in the District of Columbia with branches in other locations, it is by the Court this 13th day of April 1987,

ORDERED that the motion for return of property, pursuant to Rule 41(e), Federal Rules of Civil Procedure, is denied.

/s/ June L. Green
JUNE L. GREEN
U.S. DISTRICT JUDGE

FILED
APR 14 1987
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 87-3022 **September Term, 1987**

IN RE: CA 87-00223M-01

Seizure Warrant

Cyril Onwuasoanya,
Appellant

BEFORE: Starr, Silberman, Circuit Judges;
and McGowan, Senior Circuit Judge

ORDER

Upon consideration of appellant's motion for summary reversal and the opposition and reply thereto, it is

ORDERED by the court on its own motion that the appeal be dismissed. Appellant cannot obtain relief under Rule 41(e) of the Federal Rules of Criminal Procedure in this civil forfeiture case. *See* Fed. R. Crim. P. 54(b)(5); *see also United States v. Rapp*, 539 F.2d 1156, 1161 (8th Cir. 1976). It is

FURTHER ORDERED by the court that the motion for summary reversal be dismissed as moot.

The clerk is directed to withhold issuance of the mandate

herein until seven days after the disposition of any timely petition for rehearing. D.C. Cir. Rule 15.

Per Curiam

A true copy:
Test: George A. Fisher
United Staets Court of Appeals
for the District of Columbia Circuit
By: /s/ Denise Thomas, Deputy Clerk

United States Court of Appeals
for the District of Columbia Circuit
FILED OCT 9 1987
GEORGE A. FISHER
CLERK

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 87-3022 **September Term, 1987**

MAG. 87-00223M-01

In Re:

Seizure Warrant

Cyril Onwuasoanya,
Appellant

BEFORE: Star and Silberman, Circuit Judges*

ORDER

Upon consideration of Appellant's Petition for Rehearing, the Supplement and Opposition thereto and the Reply, it is

ORDERED, by the Court, that the petition for rehearing be denied.

Per Curiam

CONSTANCE L. DUPRE, CLERK

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

*Senior Judge McGowan did not participate in the decision on rehearing due to his death following release of the original panel decision.

United States Court of Appeals
For the District of Columbia Circuit

FILED MAY 19 1988
CONSTANCE L. DUPRE
CLERK

APPENDIX E

AO 93 (Rev. 5/85) Seizure Warrant

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

In the Matter of the Seizure of
(Name, address or brief description of person or property to be seized)
Any and all accounts in the name
Cyril A. Onwasonya at
Perpetual American Bank, FSB

SEIZURE WARRANT
CASE NUMBER: 87-0223M-01

TO: ANY DEA AGENT OR DEA/MPDC TASK FORCE OFFICER and any Authorized Officer of the United States

Affidavit(s) having been made before me by DETECTIVE DWIGHT A. RAWLS who has reason to believe that ☐ on the person of or ☒ on the premises known as (name, description and/or location)

Perpetual American Bank, FSB
2034 Eisenhower Avenue
Alexandria, Virginia

in the Eastern District of Virginia there is now concealed a certain person or property, namely (describe the person or property)

Assets and any and all accounts in the name Cyril A. Onwasonya at Perpetual American Bank, FSB.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-descreibed and establish grounds for the issuance of this warrant. In violation of 21 U.S.C. § 881(a)(6)

YOU ARE HEREBY COMMANDED to seize on or before March 20, 1987

the person or place named above for the person or property specified, serving this warrant and making the seizure (in the daytime — 8:00 A.M. to 5:00 P.M.) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to Arthur L. Burnett Sr. as required by law.

MAR 19 1987 at _____

Date and Time issued — City and State

_____ /s/ Arthur L. Burnett, Sr.

Name and Title of Judicial Officer — Signature of Judicial Officer

SUPPLEMENTAL

BRIEF

Supreme Court, U.S.
FILED
SEP 15 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

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Supreme Court of the United States
October Term, 1988

IN RE SEIZURE WARRANT
CYRIL ONWUASOANYA,

Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF

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IN THE

Supreme Court of the United States

October Term, 1988

No. 88-28

IN RE SEIZURE WARRANT
CYRIL ONWUASOANYA,

Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF

Having been notified by the Office of the Solicitor General that the Government was seeking a second thirty-day extension of time herein to answer our 8 page petition, we have taken this opportunity to present some additional materials now rather than in a reply brief.[1]

On June 16, 1987, in response to a Drug Enforcement Administration notice of forfeiture dated June 5, 1987 (Attachment A), petitioner filed an affidavit of indigency (Attachment B), and a companion demand to "contest the forfeiture in the

[1]Since this second extension will take us beyond the commencement of the October Term, any reply brief could conceivably be filed and distributed too late for the Court to consider.

United States District Court for the District of Columbia." (Attachment C)[2] Although petitioner had the uncontested right to choose that forum to hear any forfeiture case involving his property, (Attachment A, par. 3) the Government elected not to institute a forfeiture proceeding. Thus, for a period of some eighteen months since the original seizure on March 19, 1987, which deprived petitioner of the use of his money, the Government has done what it often does best in these civil forfeiture matters, *i.e.*, it has done absolutely nothing. This inaction forcefully underscores our contention that at the time petitioner's Rule 41(e) motion was filed — and continuing through today — there was no "civil forfeiture of property" *in esse* to trigger the proscription of Rule 54(b)(5). Indeed, the first official notice by the DEA to petitioner of its intention to forfeit his property, was contained in its June 5, 1987, letter to him (Attachment A) which was sent almost two months *after* his Rule 41(e) motion had been filed and denied.[3]

Had the court below ruled correctly, the Government would have been forced to either return the money to petitioner if it concluded that the seizure was unlawful or, file a forfeiture action. By ruling as it did, however, the circuit court negated this Court's expectation that a Rule 41(e) motion would cause the "rapid filing of a forfeiture action" by the Government. *United States v. $8,850,* 461 U.S. 555, 569 (1983).

In a factually equivalent case, the Eighth Circuit held that appellant "was entitled to file a Rule 41(e) motion. . . . *United States v. [$8,850]* . . ." *In re Search* and *Seizure, Al James Harper,* 835 F.2d 1273, 1274 (8th Cir. 1988).[4] In *Harper,* as here, money was seized on a tenuous legal basis by DEA

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[2]All of the materials contained in Attachments A-C were submitted to the court of appeals.

[3]Filed April 9, 1987, denied April 13. See Pet. Appendix B

[4]We were not aware of this case when the petition was filed.

Agents who told Harper *at the time* of the seizure that his funds would be held "pending civil forfeiture proceedings;" (835 F.2d 1274) and, as here, "no criminal charges were ever brought against Harper, and none [were] . . . contemplated." *(Id.)* We read this jurisdictional aspect of *Harper* as conflicting with the instant ruling. The only difference between *Harper* and the case at bar is the immaterial fact that in one case the funds were seized without a warrant, and in the other the seizure was pursuant to a warrant. The critical similarity is, however, that at the time each of the Rule 41(e) motions was filed, there was no forfeiture proceeding then extant to permit invocation of Rule 54(b)(5). In sum, *Harper* and the instant case are not distinguishable.

Respectfully submitted,

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Counsel for Petitioner
Cyril Onwuasoanya

ATTACHMENT A

LOGO
U.S. Department of Justice
Drug Enforcement Administration

SEIZURE #: 24759 CASE #: GD860034
PROP: CASHIER'S CK. PERPETUAL AMER.BK.
ID#:
VALUE: $11787.69
SEIZURE DATE: 20 MAR 87
SEIZURE PLACE: WASHINGTON, DC 20024
OWNER: CYRIL C. ONWUASONYA
SEIZED FROM: CYRIL ONWUASONYA
JUDICIAL DIST: DISTRICT OF COLUMBIA

Date: JUN 05 1987 Bond required: $1,178.00

Cyril Onwuasonya
8542 16th St., # 203
Silver Spring Md. 20910

NOTICE OF SEIZURE

The above-described property was seized by Special Agents of the Drug Enforcement Administration (DEA) for forfeiture under Title 21, United States Code (USC), Section 881. The seizure date and place, as well as other pertinent information regarding the property are also shown above. Pursuant to Title 19 USC, Section 1602-1619, and Title 21, Code of Federal Regulations (CFR), Sections 1316.71 - 1316.81, procedures to administrativley forfeit this property are under way. You may petition the DEA to return the property or your interest in it to you (remission or mitigation), and/or you may contest the seizure and forfeiture of the property in *COURT*.

TO REQUEST REMISSION OR MITIGATION OF THE FORFEITURE

If you want to request the remission (pardon) or mitigation of the forfeiture, submit a petition for remission or mitigation

within *thirty (30) days* from your receipt of this notice. Follow the regulations set forth in Title 28, CFR, Sections 9.1 - 9.7. State the facts and circumstances which you believe justify return of the property or return of your interest in the property. Attach proof of your ownership interest in the property. File an original petition and two copies with the DEA's Asset Forfeiture Unit. No bond is necessary if only a petition is filed.

TO CONTEST THE FORFEITURE

In the alternative, you may contest the forfeiture of the seized property in UNITED STATES DISTRICT COURT. To do so, *you must file a claim of ownership and bond* with the DEA. Submit the bond in the amount shown above in a *cashier's check* or a *certified check* payable to the U.S. Department of Justice, or present satisfactory surety.

If you are indigent (needy and poor) you may not have to post the bond. To request a waiver of the bond, you must fully disclose your finances in a signed statement called a "Declaration in Support of Request to Proceed *IN FORMA PAUPERIS*" along with a claim of ownership of the property. Use the format of the *pauperis* declaration following Rule 48 of the Federal Rules of Appellate Procedure, or obtain a form from the DEA field office. The claim of ownership, with either bond or the "Declaration in Support of Request to Proceed *IN FORMA PAUPERIS,*" must be filed within *twenty (20) days* of the *first date* of publication of the notice of seizure in the Wednesday edition of *USA Today*. The notice will be published three successive weeks. You should review that newspaper for the exact date.

WHERE TO SUBMIT CORRESPONDENCE

Submit all documents to THE DRUG ENFORCEMENT ADMINISTRATION, OFFICE OF CHIEF COUNSEL, ASSET FORFEITURE UNIT, 1405 I STREET, N.W., WASHINGTON, D.C. 20537. Use the seizure number identifier above in submitting the petition, the claim and bond, or other correspondence with the DEA. Failure to do so may cause delay in DEA's action on this matter.

/s/ William J. Snider
William J. Snider
Forfeiture Counsel

ATTACHMENT B

U.S. Department of Justice
Drug Enforcement Administration

SEIZURE #: 24759 CASE #: GD860034
PROP: CASHIER'S CK. PERPETUAL AMER.BK.
ID#:
VALUE: $11787.69
SEIZURE DATE: 20 MAR 87
SEIZURE PLACE: WASHINGTON, DC 20024
OWNER: CYRIL C. ONWUASONYA
SEIZED FROM: CYRIL ONWUASONYA
JUDICIAL DIST: DISTRICT OF COLUMBIA

Date: JUN 05 1987	Bond required: $1,178.00

Cyril Onwuasonya
8542 16th St., # 203
Silver Spring Md. 20910

Declaration In Support of Request to Proceed IN FORMA PAUPERIS

I, Cyril Onwuasoanya, declare that because of my poverty I am unable to provide a bond of $1,178.00 necessary to contest the forfeiture in the above-described case.

1. I am not presently employed. I have never worked in this country but have always been a student.

2. I have received money in the past 12 months from my family in Nigeria.

   a. In the past 12 months I have received a total of $40,000 from my family.

3. I have no checking or savings account and my present cash on hand is $700.00 which has been borrowed from a fellow Nigerian student.

4. I do not own any real estate, stocks, bonds, notes, or

other valuable property other than a 1982 Volkswagen Rabbit, which is registered to me.

I understand that a fale statement by me in this affidavit will subject me to penalties for perjury.

/s/ Cyril Onwuasoanya
Cyril Onwuasoanya

Subscribed and sworn to me this 16th day of June 1987.
/s/ Dorothy J. Pinche, Notary
MY COMMISSION EXPIRES JULY 31, 1990

ATTACHMENT C

U.S. Department of Justice
Drug Enforcement Administration

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Date: JUN 05 1987	Bond required: $1,178.00

Cyril Onwuasonya
8542 16th St., # 203
Silver Spring Md. 20910

Claim of Ownership to Contest the Above Forfeiture In United States District Court

I, Cyril Onwuasoanya, hereby claim ownership of the above-described $11,787.69, seized from my bank account on March 20, 1987, and want to contest the forfeiture in the United States District Court for the District of Columbia.

/s/ Cyril Onwuasoanya
Cyril Onwuasoanya

June 16, 1987